



# California Fair Political Practices Commission

March 16, 1990

Thomas W. Hiltachk  
Nielsen, Merksamer, et al.  
770 L Street  
Suite 800  
Sacramento, CA 95814

Re: Hiltachk Advice Letter  
No. A-89-533

Dear Mr. Hiltachk:

This is to advise you that, upon consideration by the Commission at its March 13, 1990 meeting, the advice I gave to you in the Hiltachk Advice Letter, No. A-89-533, dated October 10, 1989, has been revised.

In that letter, I informed you that, pursuant to Section 85202 of the Political Reform Act<sup>1</sup>, a candidate may make contributions from his controlled committee for election to office to a ballot measure committee as long as the ballot measure committee is not controlled by another candidate. (See Section 85304.)

The Commission considered and affirmed the advice at its January meeting. However, having considered a related issue in depth at its February 6 and March 13 meetings, the Commission has now directed staff to offer the following advice on this subject:

(1) A candidate's controlled committee for election to office may make contributions to a ballot measure committee, whether or not the ballot measure committee is controlled by another candidate.

(2) There are no limits on the amount of money the candidate-controlled committee can contribute to a ballot measure committee.

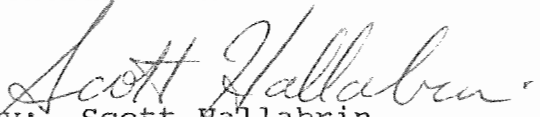
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<sup>1</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code.

Please contact me at (916) 322-5901 if you have any questions regarding this advice.

Sincerely,

Kathryn E. Donovan  
General Counsel

  
By: Scott Hallabrin  
Counsel, Legal Division

KED:SH:ld



# California Fair Political Practices Commission

October 10, 1989

Thomas W. Hiltachk  
NIELSEN, MARKSAMER, HODGSON,  
PARRINELLO & MUELLER  
770 L Street, Suite 800  
Sacramento, CA 95814

Re: Your Request for Confirmation of  
Telephone Advice  
Our File No. A-89-533

Dear Mr. Hiltachk:


This is to confirm as accurate your summary of the telephone advice I provided to you on September 7, 1989 concerning a candidate controlled committee's contribution to a ballot measure committee from campaign funds raised after January 1, 1989.

Specifically, I informed you that such a contribution is permissible under Section 85302 of the Political Reform Act<sup>1</sup> as long as the ballot measure committee is not controlled by a candidate.

Should you have any questions, please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan  
General Counsel

  
By: Scott Hallabrin  
Counsel, Legal Division

KED:SH:ld

<sup>1</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.



# California Fair Political Practices Commission

September 13, 1989

Thomas W. Hiltachk  
Nielsen, Merksamer, Hodgson,  
Parrinello & Mueller  
770 L Street, Suite 800  
Sacramento, CA 95814

Re: Letter No. 89-533

Dear Mr. Hiltachk:

We received your letter requesting confirmation of advice under the Political Reform Act on September 11, 1989. Your letter has been assigned to Margaret Ellison for response. If you have any questions, you may contact her directly at (916) 322-5901.

If the letter is appropriate for confirmation without further analysis, we will attempt to expedite our response. A confirming response will be released after it has gone through our approval process. If the letter is not appropriate for this treatment, the staff person assigned to prepare the response will contact you shortly to advise you. In such cases, the normal analysis, review and approval process will be followed.

You should be aware that your letter and our response are public records which may be disclosed to any interested person upon receipt of a proper request for disclosure.

Sincerely,

A handwritten signature in cursive script that reads "Kathryn E. Donovan".

Kathryn E. Donovan  
General Counsel

KED:plh:confadv1

LAW OFFICES OF  
**NIELSEN, MERKSAMER,  
HODGSON, PARRINELLO & MUELLER**

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770 L STREET, SUITE 800

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TELEPHONE (916) 446-6752

SAN FRANCISCO

650 CALIFORNIA STREET, SUITE 2650

SAN FRANCISCO, CALIFORNIA 94108

TELEPHONE (415) 989-6800

FILE NUMBER

September 7, 1989

Mr. Scott Hallabrin  
Fair Political Practices Commission  
428 J Street, Suite 800  
Sacramento, CA 95814

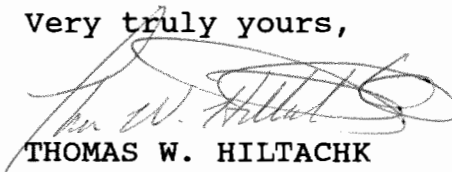
Dear Mr. Hallabrin:

This letter will confirm our telephone conversation on September 7, 1989. I asked whether a candidate controlled committee could make contributions to ballot measure committees from campaign funds raised after January 1, 1989.

You informed me that such a contribution was permissible under Government Code section 85202 as long as the ballot measure committee was not controlled by a candidate. You also informed me that you expect the Commission to address the issue of contributions to candidate-controlled ballot measure committees in the near future.

As always, thank you for your courtesy and cooperation.

Very truly yours,



THOMAS W. HILTACHK

TWH/kab

SEP 11 9 09 AM '89  
FPPC

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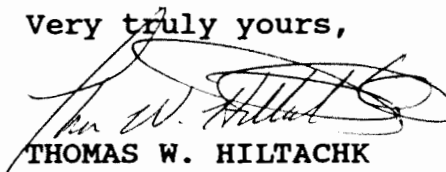
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As always, thank you for your courtesy and cooperation.

Very truly yours,

  
THOMAS W. HILTACHK

TWH/kab

SEP 11 9 09 AM '89  
FPPC



STATE OF CALIFORNIA

SENATE

SACRAMENTO, CALIFORNIA 95814

DAVID ROBERTI  
PRESIDENT PRO TEMPORE

March 7, 1990

The Honorable John H. Larson, Chair  
Frank Aparicio, Commissioner  
George Fenimore, Commissioner  
Joseph Rattigan, Commissioner  
Donald Vial, Commissioner  
Fair Political Practices Commission  
428 "J" Street, Suite 800  
Sacramento, CA 95814

RE: Comments on Candidate Controlled Ballot Measure  
Committees

Dear Members of the Commission:

It is our understanding that the Commission will be considering at its March 13, 1990 meeting, the issue of candidate-controlled ballot measure committees, particularly as this issue relates to fund-raising activities.

Our opinion is that the Commission should adopt the first option in the staff's March 2, 1990 memorandum -- that the "Commission may not regulate contributions to or expenditures by ballot measure committees."

The Commission is aware of the rigid constitutional barriers to placing limits, whether on the amount or the source of contributions to ballot measure committees. See Citizens Against Rent Control v. Berkeley (1981) 454 U.S. 290, First National Bank of Boston v. Belotti (1978) 435 U.S. 765, and related cases.

However, the issue is not really one of constitutional interpretation; Proposition 73 does not address contributions to ballot measure committees. A reading of the text, ballot arguments, and Legislative Analyst's analysis, reveals that the measure only regulates contributions to candidates for elective office.

However, if the Commission interprets provisions of Proposition 73 to limit the amount or source of contributions to ballot measure committees where a candidate or candidates control campaign activities, the

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Commission should recognize the compelling distinction between those ballot measures constitutionally required to be legislative enactments and those which arise from the initiative process.

The March 2 memorandum and the earlier McCarthy and Hiltack letters overlook the fact that the state Constitution obligates the Legislature to place on the ballot constitutional amendments, such as SCA 1/Proposition 111 and SCA 32/Proposition 112 and bond measures such as SB 1693/Proposition 107 and SB 147/Proposition 121. It is traditional that legislators and the Governor take the lead in organizing and financing the campaign committees. Moreover, it is inevitable. Legislative ballot measures deal with issues and policies for which there is no organized support, particularly funding, other than that of elected officials. For example, it would be fanciful to imagine that California's "homeless" have the resources to qualify or campaign for a measure like Proposition 107, the Housing and Homeless Bond Act.

If the Commission applies the contribution limits and fund transfer ban under Proposition 73 to candidate-controlled ballot measure committees, the Legislature and the Governor would be hamstrung in their ability to communicate with the voters. We need to remember that the only compelling state interest to permit restrictions on free speech as expressed by campaign contributions and expenditures is to prevent corruption or the appearance of corruption on the part of candidates running for public office. See Buckley v. Valeo (1976) 424 U.S. 1.

We find it difficult to understand how placing limits on contributions to a committee supporting a legislatively enacted ballot measure, simply because that committee is "controlled" by one or more elected officials, is relevant to the "corruption prevention" rationale. Indeed, it might well constitute an impermissible burden on First Amendment freedom of speech.

Under Hiltack, the Commission has stated that a candidate may transfer funds from his or her recipient committee to a ballot measure committee which he or she controls, regardless of whether the ballot measure was a legislative enactment or an initiative. We agree with that position.

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March 7, 1990  
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We think, however, that the legal rationale of Hiltack should be extended to permit candidates controlling a ballot measure committee to solicit campaign contributions on behalf of, and transfer funds to, that committee if the measure was placed on the ballot by the Legislature.

Additionally, we note that the staff memorandum of March 2 omits reference to existing law governing use of campaign funds controlled by a ballot measure committee. This could create a perception that there would be no regulation in the area if the Commission concludes it may not regulate contributions to, or expenditures by, ballot measure committees. In fact, the combination of existing election law and solid Commission regulations defining contributions by a ballot measure committee to a candidate could effectively resolve the issue.

Section 29795 of the Elections Code provides that funds held by a ballot measure are in trust and may be used only for "promoting or defeating any initiative, referendum, or recall petition." Section 29795 lists types of expenditures "considered to be within the due and lawful execution of the trust." Violation can be either a felony or misdemeanor.

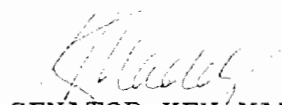
We appreciate the challenges the Commission has and is facing. Its decisions on the issues addressed in this letter will affect profoundly the freedom of speech necessary for public deliberation of issues raised in ballot measures.

Thank you for your careful review of these important matters.

Sincerely,



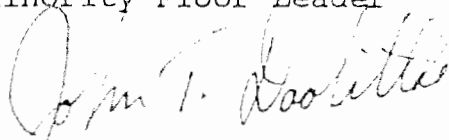
SENATOR DAVID ROBERTI  
President Pro Tempore



SENATOR KEN MADDY  
Minority Floor Leader



SENATOR BARRY KEENE  
Majority Leader



SENATOR JOHN DOOLITTLE  
Chairman, Republican  
Caucus

DR:BK:KM:JD:/th/cpl